

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

CAMIKA S. JERIDO,

EEOC Case No. 15D200800033

Petitioner,

FCHR Case No. 2007-02675

v.

DOAH Case No. 08-1747

PSS WORLD MEDICAL,

FCHR Order No. 08-064

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Camika S. Jerido filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2007), alleging that Respondent PSS World Medical committed unlawful employment practices on the basis of Petitioner's race (Black) by subjecting Petitioner to disparate treatment and denying Petitioner promotion.

The allegations set forth in the complaint were investigated, and, on March 26, 2008, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held by video teleconference on July 1, 2008, at sites in Tallahassee and Jacksonville, Florida, before Administrative Law Judge Barbara J. Staros.

Judge Staros issued a Recommended Order of dismissal, dated August 21, 2008.

Pursuant to notice, public deliberations were held on October 29, 2008, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 200, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Following the issuance of the Recommended Order on August 21, 2008, Petitioner filed with the Division of Administrative Hearings on September 3, 2008, a document entitled "Final Order Along With Exceptions to the Recommended Order by Camika S. Jerido."

There is no indication on the document that it was provided to Respondent's counsel as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the document to the Respondent, and placed the document in the record of this case, through the issuance of a Notice of Ex Parte Communication, mailed to the parties on September 10, 2008.

Even though the document was sent to the Division of Administrative Hearings rather than the Commission, it was filed with Division of Administrative Hearings within fifteen days after the issuance of the Recommended Order, and therefore is deemed timely filed. Accord, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), Lucas v. Department of Children and Family Services, FCHR Order No. 07-023 (March 12, 2007), Harris v. Lake County School District, FCHR Order No. 06-057 (June 20, 2006), Brockman v. University of Miami-Bascom Palmer Eye Institute, FCHR Order No. 05-127 (November 21, 2005), and Welch v. Department of Children and Family Services, FCHR Order No. 05-118 (October 20, 2005).

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2007).

A review of Petitioner's exceptions document suggests that all matters discussed in the document do not comply with this statutory provision.

Nevertheless, it can be said that Petitioner's document takes exception with facts found, facts not found, and inferences drawn from the evidence presented.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence

presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005).

Based on the foregoing, Petitioner's exceptions are rejected.

Dismissal

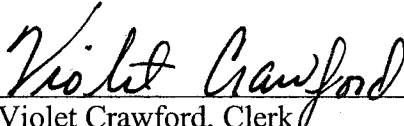
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 30th day of October, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Anice R. Prosser, Panel Chairperson;
Commissioner Watson Haynes, II; and
Commissioner Mario M. Valle

Filed this 30th day of October, 2008,
in Tallahassee, Florida.



Violet Crawford, Clerk

Commission on Human Relations
2009 Apalachee Parkway, Suite 200
Tallahassee, FL 32301
(850) 488-7082

NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

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3344 Hunt Street
Jacksonville, FL 32254

PSS World Medical
c/o Timothy B. Strong, Esq.
Fowler White Boggs Banker, P.A.
50 North Laura Street, Suite 2200
Jacksonville, FL 32202

Barbara J. Staros, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 30th day of October, 2008.

By: *Violet Crawford*
Clerk of the Commission
Florida Commission on Human Relations